

STATE OF MICHIGAN
COURT OF APPEALS

In re P. A. C. E. WILLIAMS, Minor.

UNPUBLISHED
April 19, 2016

Nos. 330111; 330114
Kalamazoo Circuit Court
Family Division
LC No. 2014-000110-NA

Before: JANSEN, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and respondent father appeal as of right the order terminating their parental rights to the minor child. Respondent mother's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication), (c)(ii) (other conditions exist that could have caused the child to come within the court's jurisdiction and they have not been rectified), (g) (failure to provide proper care and custody), (j) (reasonable likelihood that child will be harmed if returned to parent), and (l) (parental rights previously terminated to another child). Respondent father's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

I. STATUTORY GROUNDS

In Docket No. 330111, respondent mother argues that the trial court erred in finding that statutory grounds existed for termination of her parental rights. We disagree.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The trial court must find that at least one of the statutory grounds in MCL 712A.19b(3) has been met by clear and convincing evidence in order to terminate parental rights. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's decision for clear error. *Id.* "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court terminated mother's parental rights to the child pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), (j), and (l), which provide as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

A. MCL 712A.19b(3)(c)(i)

With respect to MCL 712A.19b(3)(c), the trial court entered an initial dispositional order on July 9, 2014. The termination hearing was held on September 22, 2015. Thus, more than 182 days elapsed since the issuance of an initial dispositional order for purposes of MCL 712A.19b(c)(i) and (ii).

For termination to be proper under MCL 712A.19b(3)(c)(i), the conditions that led to adjudication must continue to exist. MCL 712A.19b(3)(c)(i). Termination is proper on this basis when "the totality of the evidence" supports that the respondent-parent did not accomplish

“any meaningful change in the conditions” that led to adjudication. See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009).

We first note that respondent mother argues on appeal that the trial court improperly relied on a psychiatric evaluation from June 2013 in making its termination decision. Although respondent mother objected to its admission at the termination hearing, she does not assert a challenge to the evaluation’s admissibility on appeal. She simply argues that the evaluation was “stale,” and she should have been given additional time for a new evaluation. Contrary to respondent mother’s argument, it does not appear that the trial court significantly relied upon the evaluation in making its termination decision. At most, it simply referred to respondent mother’s diagnosis in its discussion of her mental health barrier. Moreover, respondent mother fails to argue that the information contained in the evaluation was outdated. Therefore, the trial court did not err to the extent that it considered the psychiatric evaluation in rendering its termination decision.

Based on the amended petition, the condition that primarily led to respondent mother’s adjudication was improper care of the child. Respondent mother also had mental health issues at the time the child was removed. There is no indication that respondent mother made any meaningful change with respect to her improper care of the child or her mental health. First, with respect to respondent mother’s parenting skills, the record shows that she had not improved her ability to care for the child by the time of termination. The allegations in the amended petition listed numerous examples of respondent mother’s improper care or supervision of the child. Based on her inability to care for the child, it was alleged that she could not be left alone with him without supervision. At the time of the termination hearing, almost 1 ½ years later, respondent mother had yet to receive unsupervised visits with the child. The case worker, Robyn Hagen’s, testimony established that respondent mother was still not in a position to parent the child without supervision. The record supports that respondent mother struggled with numerous parenting tasks, such as feeding the child and appropriately changing his diaper. Accordingly, the condition of improper care that led to respondent mother’s adjudication continued to exist.

The condition regarding respondent mother’s mental health also continued to exist at the time of termination. Although respondent mother generally complied with her mental health services throughout the proceeding, there is no evidence that she derived a benefit therefrom. Hagen’s testimony established that respondent mother’s mental health condition was the same at the time of termination as it was when the proceeding commenced. She had not seen any improvement or changes. Thus, this condition continued to exist as well.

MCL 712A.19b(3)(c)(i) additionally requires the trial court to find that the parent would be unable to rectify the conditions within a reasonable time considering the child’s age. The determination of what constitutes a reasonable time for conditions to be rectified includes both how long it will take the parent to improve the conditions and how long the child can wait for the parent’s improvement. See *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991). At the time of termination, the child was approximately 1 ½ years old. He had been under the court’s jurisdiction for nearly his entire life. There was no indication that respondent mother’s parenting skills would improve in a reasonable time. Hagen opined that respondent mother simply did not have the capacity to parent; thus, additional time likely would not help. Moreover, in the months leading up to termination, respondent mother’s attendance at parenting

time declined. She was not consistently participating in visits, and she failed to engage and interact with the child when she attended visits. With respect to respondent mother's mental health, she had been receiving services through Summit Pointe since 2005. Over the course of the entire case, respondent mother showed no improvement. Therefore, there is no indication that she could do so if given more time. The child could not wait an indefinite time for respondent mother to improve. See *id.* at 647. Therefore, the trial court did not clearly err in terminating respondent mother's parental rights under MCL 712A.19b(3)(c)(i).

B. MCL 712A.19b(3)(c)(ii)

Although the supplemental petition seeking the termination of respondent mother's parental rights does not specify what "other condition" respondent mother failed to rectify, it specifically cites several barriers pertaining to mother: (1) mental health/emotional stability, (2) parenting, and (3) housing. We conclude that of these barriers, respondent's housing constituted an additional issue that respondent mother failed to rectify. The record supports that respondent mother did not rectify this condition by the time of termination. Shortly after the commencement of this proceeding, respondent mother obtained an apartment. However, she lost her apartment when she was hospitalized, and she moved into the adult foster home. Since leaving the foster home in July 2015, respondent mother had been temporarily residing with a friend. She did not have stable housing of her own. Thus, at the time of termination, the "other condition" regarding respondent mother's housing had not been rectified. See MCL 712A.19b(3)(c)(ii).

However, MCL 712A.19b(3)(c)(ii) additionally requires that there is no reasonable likelihood that the condition would be rectified within a reasonable time considering the child's age. At the termination hearing, Hagen testified that she received information from Summit Pointe that respondent mother was eligible to reapply for a housing voucher if she verified her homelessness. Should respondent mother do so, it is likely that she would be able to find housing within a reasonable time. Respondent mother obtained housing through a Summit Pointe housing voucher in the past, and no evidence was presented suggesting that she would be unable to do so again. Accordingly, even assuming that housing was the other condition that respondent failed to rectify, we do not believe that there was no reasonable likelihood that the condition would be rectified within a reasonable time. Despite this clear error, one statutory ground was sufficient to terminate respondent mother's parental rights. See *HRC*, 286 Mich App at 461. Because clear and convincing evidence was presented to support the termination of respondent mother's rights on the other statutory grounds alleged, this error is harmless. See *id.*

C. MCL 712A.19b(3)(g)

The record supports the trial court's finding that respondent mother was unable to provide proper care and custody of the child. There were several concerns regarding respondent mother's mental health and parenting skills that remained at the time of termination. Despite respondent mother's efforts to improve her mental health over the course of this proceeding, she was unable to do so. The evidence demonstrates that respondent mother made virtually no changes regarding her mental health condition and that she lacked the mental capacity to successfully parent the child. Although respondent mother participated in and completed the Supportive Visitation Program, she did not show a benefit. Respondent mother never received unsupervised visits throughout the proceeding, and she continually struggled to engage and

interact with the child. The record supports that respondent mother, despite the services provided, failed to understand the child's developmental stages. Respondent mother also continued to struggle with basic parenting skills such as feeding the child and changing his diaper. Moreover, respondent mother did not have stable and appropriate housing at the time of termination. The friend's residence at which she was living was meant to be a temporary arrangement. Thus, the trial court did not clearly err in finding that respondent mother could not provide the child with proper care and custody.

MCL 712A.19b(3)(g) also requires a finding that respondent mother would not be "able to provide proper care and custody within a reasonable time considering the child's age." At the time of termination, the child was approximately 1 ½ years old and had been under the court's jurisdiction almost his entire life. The majority of respondent mother's issues remained unresolved at the time of termination, and there was no indication that she would be able to improve her mental health condition and parenting skills in order to provide proper care and custody in a reasonable time. Also, in the months leading up to the termination hearing, respondent mother's attendance at parenting time sessions significantly declined; thus, it is uncertain whether respondent mother would continue to participate in services if given more time. Although it is possible that respondent mother could alleviate the issues, change was only a "mere possibility." See *Williams*, 286 Mich App at 273 (upholding termination under MCL 712A.19b(3)(c)(i) and (g) after finding that the two years the child spent in foster care "constituted too long a period to await the mere possibility of a radical change" in the respondent's life). Therefore, it was not clearly erroneous for the trial court to terminate respondent mother's parental rights under MCL 712A.19b(3)(g).

D. MCL 712A.19b(3)(j)

The record supports termination of respondent mother's parental rights under this statutory ground. Testimony from the termination hearing established that there was a reasonable likelihood that the child would be harmed if returned to respondent mother's care based on her conduct and capacity. As discussed, Hagen testified to her belief that respondent mother struggled with parenting because of her mental capacity. Respondent mother continued to have unresolved mental health issues that affected her parenting. Hagen was concerned for the child's safety if he was ever to be left alone in his mother's care without supervision. In fact, respondent mother was never left unsupervised with the child. She struggled with overfeeding him and changing his diaper, and she did not appear to have basic parenting skills. She also failed to participate in a significant number of parenting time sessions in the months leading up to termination. Therefore, because the record supports that the child was at a risk of harm if returned to his mother's care, the trial court did not clearly err by terminating respondent mother's parental rights pursuant to MCL 712A.19b(3)(j).

E. MCL 712A.19b(3)(l)

In this case, it is undisputed that respondent mother's parental rights to the child's sibling were involuntarily terminated one year before the child was born. Accordingly, the trial court did not clearly err in terminating respondent mother's parental rights on this ground. See MCL 712A.19b(3)(l).

II. BEST INTERESTS

Respondent mother also argues that the trial court clearly erred in determining that termination of her parental rights was in the child's best interests. We disagree.

The trial court must find by a preponderance of the evidence that termination is in a child's best interest. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review the trial court's decision for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Factors to be considered include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Id.* (citation omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the [child's] well-being while in care, and the possibility of adoption." *Id.* at 714. Further, the court may also consider whether it is likely "that the child could be returned to [his] parents' home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

The trial court did not clearly err in its best-interest determination with respect to respondent mother. There was no evidence that respondent mother and the child shared a bond or that she had developed the parenting skills necessary to parent. During the time that the child was in foster care, respondent mother "failed to derive any lasting benefit" from many of the services provided to her. See *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). The child was bonded to his foster family and was thriving in his foster placement, where he had the potential for adoption. See *White*, 303 Mich App at 714. The child deserved permanency and stability, and there was no indication respondent mother would be able to provide it in the foreseeable future, if at all. See *Frey*, 297 Mich App at 248-249.

III. REASONABLE EFFORTS

Finally, respondent mother argues that the agency failed to make reasonable efforts toward reunification, specifically based on its failure to refer her to parenting classes. We disagree.

We review this claim for plain error affecting substantial rights because respondent mother failed to raise it in the trial court. See *Frey*, 297 Mich App at 247; *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). When a child is removed from his parent's custody, the petitioner must "make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *HRC*, 286 Mich App at 462. Reasonable efforts must be made in all cases, unless the case involves aggravated circumstances. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *Frey*, 297 Mich App at 248.

Respondent mother cannot establish plain error. Although she was not referred to parenting classes, the agency referred respondent mother to a Supportive Visitation Program. When respondent mother completed the program, the agency still had concerns regarding her

parenting skills. It may have been appropriate at that point to refer respondent mother to a parenting class. However, the agency made other efforts aimed at improving respondent mother's parenting skills. She received individual coaching from a support worker during her supervised parenting time visits, and the support worker, as well as the caseworker, addressed their parenting concerns with respondent mother.

Further, respondent mother fails to recognize her "commensurate responsibility" to participate in services. In the months leading up to the termination hearing, respondent mother missed the vast majority of her scheduled parenting time visits. During the visits she attended, she failed to sufficiently engage or interact with the child. Therefore, we find that the agency made reasonable efforts to reunify respondent mother with the child, but she failed to meet her responsibility to participate in services and benefit from them.¹ See *Frey*, 297 Mich App at 248.

In Docket No. 330114, respondent father similarly argues that petitioner failed to make reasonable efforts to reunite him with the child, rectify the conditions that led to adjudication, and prevent termination of his parental rights.² We disagree.

We also review this claim for plain error affecting substantial rights because respondent father did not properly preserve the argument in the trial court below. *Frey*, 297 Mich App at 247; *Utrera*, 281 Mich App at 8-9.

Respondent father's argument focuses specifically on the agency's efforts to address his mental health and housing. With respect to respondent father's mental health, he was offered services through at least two agencies. Though respondent father was provided with extensive services, he argues that the agency did not reasonably accommodate his cognitive limitations. We disagree. Respondent father completed a psychiatric evaluation in January 2014³ that recommended, on the basis of his diagnosis, that he should continue services. The agency, thus, kept those mental health services in place. Respondent father missed appointments with Summit Pointe, and he did not successfully complete the services offered. During the proceeding, father also received services with Psychological Consultants. Testimony revealed that he failed to attend appointments with that group as well.

¹ We note that, even assuming that petitioner failed to make reasonable efforts, reasonable efforts to reunite the child and respondent mother were not required since respondent mother's parental rights to the child's sibling were involuntarily terminated. See MCL 712A.19a(2)(c); *In re Smith*, 291 Mich App 621, 623; 805 NW2d 234 (2011).

² Respondent father does not raise a challenge to the statutory grounds or the best-interest determination. Nevertheless, to the extent that he implicitly challenges either determination, we have reviewed the record and find no clear error.

³ To the extent respondent father argues that he should have received an updated evaluation, we also disagree. The psychiatric evaluation was completed less than three months before the child was removed, and it does not appear to be outdated. Also, respondent father has made no showing that an updated evaluation would have helped the agency tailor his services any differently.

Respondent father simply fails to demonstrate that the services he was provided were inadequate. He argues that he was overwhelmed with the services offered and that it was difficult for him to follow through without further assistance. However, respondent father was referred for case management services, which conceivably could have helped him manage his service plan, but he was dismissed from that service due to his noncompliance. In fact, respondent father was generally noncompliant with many of his services. He did not consistently attend counseling or parenting time, and he was not taking his prescribed medication. The record supports that the agency attempted to adjust respondent father's schedule on multiple occasions to ensure that he could participate in services, but he still failed to comply. Because of respondent father's "commensurate responsibility" to participate in the services offered to him, he has not demonstrated plain error with respect to the agency's efforts to rectify his mental health barrier. See *Frey*, 297 Mich App at 248.

With respect to respondent father's housing, he was on a waiting list and ultimately received a housing voucher through Summit Pointe to find a suitable place to live. However, respondent father lost his voucher during the proceeding, and no further services appeared to be offered. Assuming, without deciding, that the agency failed to make reasonable efforts to address the housing barrier, respondent father cannot establish plain error affecting his substantial rights. Respondent father's history of noncompliance in this case shows that it is unlikely that he would have been able to obtain stable and appropriate housing had additional housing services been provided. The record does not show that he took any further steps to obtain housing after he lost his voucher, such as contacting local housing commissions, as suggested by the agency. Moreover, housing was not the only barrier keeping respondent father from having the child returned. He showed little compliance with the service plan, failed to benefit from services, and was not in a position to properly parent the child at the time of termination. Accordingly, respondent father is not entitled to reversal of the trial court's termination order.

Affirmed.

/s/ Kathleen Jansen
/s/ Deborah A. Servitto
/s/ Michael J. Kelly